

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND,
and HOWARD McDOUGALL, trustee,

Plaintiffs,)

V. _____)

DON DARR CHEVROLET, INC., a Delaware corporation,

Defendant.)

Case No. 08 C 1095

Judge Joan B. Gottschall

Magistrate Judge Maria Valdez

**PLAINTIFFS' MOTION TO REINSTATE CASE AND
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

NOW COME Plaintiffs Central States, Southeast and Southwest Areas Pension Fund (“Pension Fund”), and Howard McDougall, trustee, by their attorney, and move to reinstate the above-captioned case against Don Darr Chevrolet, Inc., a Delaware corporation (“Don Darr”) and request leave to file the First Amended Complaint attached hereto as Exhibit B. In support, Plaintiffs state as follows:

1. On February 22, 2008, Plaintiffs filed their Complaint against Defendant Don Darr in the instant civil action pursuant to the Employee Retirement Income Security Act, 29, U.S.C. §1001, *et seq.*, seeking the collection of withdrawal liability, interest, and penalties incurred by Defendant Don Darr as a result of a withdrawal from the Pension Fund.

2. In its Answer filed on April 24, 2008, Defendant Don Darr indicated that it did not receive a copy of the Notice and Demand for payment of withdrawal liability.

3. As a consequence, on May 22, 2008, the parties filed an Agreed Motion For Entry of a Stipulated Dismissal Order, dismissing the case without prejudice with each party bearing its own costs, to which the Court gave its assent and entered on May 28, 2008. A copy of the Stipulated Dismissal is attached hereto as Exhibit A.

4. On or about May 27, 2008, Defendant Don Darr, through counsel, received a copy of the Notice and Demand for payment of withdrawal liability.

5. Defendant Don Darr never requested that the Pension Fund review its withdrawal liability determination pursuant to § 4219(b)(2)(A) of ERISA, 29 U.S.C. § 1399(b)(2)(A).

6. Defendant Don Darr Chevrolet did not timely initiate arbitration of the Pension Fund's withdrawal liability determination pursuant to § 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1).

7. To date, Defendant Don Darr Chevrolet has not paid any of the withdrawal liability assessment, and is therefore in default within the meaning of section 4219(c)(5) of ERISA, 29 U.S.C. §1399(c)(5).

8. As Defendant Don Darr answered the initial Complaint, Plaintiffs seek leave to file the First Amended Complaint attached hereto as Exhibit B.

WHEREFORE, Plaintiffs Central States, Southeast and Southwest Areas Pension Fund, and Howard McDougall, trustee, move the Court to reinstate the above-captioned case and grant Plaintiffs leave to file the First Amended Complaint attached hereto as

Exhibit B and order Defendant Don Darr to answer or otherwise plead within 20 days.

Respectfully submitted,

September 10, 2008

s/ Rathna C. Rodgers
Rathna C. Rodgers (ARDC #06239131)
Attorney for Plaintiffs
Central States, Southeast and Southwest
Areas Pension Fund, Central States,
Southeast and Southwest Areas
Health and Welfare Fund
9377 West Higgins Road
Rosemont, Illinois 60018
(847) 518-9800, Ext. 3435
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CERTIFICATE OF SERVICE

I, Rathna C. Rodgers, one of the attorneys for Plaintiffs Central States, Southeast and Southwest Areas Pension Fund, certify that on September 10, 2008, I caused the foregoing Motion to Reinstate Case And For Leave to File First Amended Complaint to be filed electronically. I also served the foregoing by mailing said Motion to:

DON DARR CHEVROLET, INC.
c/o Donald L. Darr, Registered Agent
4010 Galt Ocean Drive
Apartment 404
Ft. Lauderdale, Florida 33308

Said Motion was deposited in the United States Mail at 9377 West Higgins Road, Rosemont, Illinois, 60018-4938, with proper prepaid postage affixed thereto, this 10th day of September, 2008.

s/ Rathna C. Rodgers
Rathna C. Rodgers (ARDC #06239131)
Attorney for Plaintiffs